

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
NORTHERN DIVISION**

James DeFalco

Plaintiff,

VS.

**Marc Tolmie and Luebke Enterprises
LLC**

Defendants.

No. 20-cv-50343

Jury Trial Demanded

Complaint

Now comes the Plaintiff James DeFalco by and through his attorneys, The Vrdolyak Law Group LLC, in support of his complaint against defendants Marc Tolmie and Luebke Enterprises LLC, states:

Count I

(Negligence -Marc Tolmie)

1. Plaintiff James DeFalco is a citizen of the state of Illinois. Defendant truck driver, Marc Tolmie is a Wisconsin citizen. Defendant Luebke Enterprises LLC is also a Wisconsin citizen, being a Wisconsin company with its principal place of business in Janesville, Wisconsin.

3. The amount in controversy exceeds, exclusive of interest and costs, the sum specified by 28 U.S.C. § 1332, making subject matter jurisdiction appropriate in this Court based on diversity of citizenship.

4. Venue is properly set in this district pursuant to 28 U.S.C. § 1391 (b) since all defendants transact business within this judicial district and this judicial district is where substantial events giving rise to plaintiff's injury and damages occurred.

5. On July 20, 2020, defendant trucker Marc Tolmie lived at 1302 Emerson Street, Beloit Wisconsin 53511. On that day, defendant Luebke Enterprises LLC had its corporate headquarters located at 2527 East County Road O, Janesville, Wisconsin 53546.

6. On July 20, 2020 defendant trucker Marc Tolmie possessed a Wisconsin CDL and was operating a 2005 Peterbilt tractor, VIN # 1XP7DU9X65D879108 with a Wisconsin license plate #24508W, pulling a fully loaded 44 foot Cornhusker ultra-lite trailer with a license plate number #572337 in interstate commerce through a marked construction zone on I-90 Westbound in Winnebago county, when that commercial motor vehicle impacted the rear of a Honda automobile, which was slowing due to traffic. At the time of the collision, the Honda automobile was owned and occupied by the plaintiff.

7. On July 20, 2020, the 2005 Peterbilt tractor and Cornhusker ultra-lite trailer involved in the collision with the plaintiff, were both owned by Luebke Enterprises LLC with the tractor displaying Luebke Enterprises' US DOT number 1272515 and their logo.

8. On July 20, 2020, the commercial motor vehicle weighing in excess of 26,001 pounds was being operated in interstate commerce by the defendant's actual employee, FMCSR §390.5 statutory employee Marc Tolmie, pursuant to Luebke

Enterprises LLC's US DOT active motor carrier authority #1272515. The commercial motor vehicle consisted of the 2005 Peterbilt tractor and a fully loaded Cornhusker ultra-lite trailer.

9. At all relevant times, including July 20, 2020 Marc Tolmie and Lubke Enterprises LLC regularly hauled freight through Illinois, including the freight being hauled at the time of the collision, in the usual course of Luebke's Enterprise LLC's business as an interstate motor carrier.

10. On July 20, 2020 Plaintiff James DeFalco was injured because of a rear end collision caused by the aforementioned commercial motor vehicle displaying Luebke Enterprises LLC's US DOT number 1272515 , and its logo , operated that day by Marc Tolmie within the scope of his duties with Luebke Enterprises LLC.

11. On and before July 20, 2020, Luebke's Enterprise LLC's was the actual or statutory employer under FMCSR §390.5 of defendant trucker Marc Tolmie and is vicariously liable for his negligent conduct while operating the Peterbilt tractor bearing its logo.

12. On July 20, 2020 it was the duty of Luebke's Enterprise LLC's and its actual employee or §390.5 statutory employee, Marc Tolmie, to exercise reasonable care under the circumstances to protect the safety of the traveling public, including the plaintiff. In violation of this duty each of the defendants:

- a) negligently, carelessly and improperly drove the 2005 Peterbilt tractor truck into the rear of Plaintiff's Honda automobile;
- b) negligently, carelessly and improperly failed to control the Peterbilt tractor-truck to avoid a rear end collision with plaintiff's Honda automobile;

- c) negligently, carelessly, and improperly failed to keep a proper lookout;
- d) negligently, carelessly and improperly operated the Peterbilt tractor truck contrary to Industry standards regarding space management;
- e) failed to decrease speed so as to avoid colliding with plaintiff, in violation of 625 ILCS 5/11-601(a);
- f) negligently, carelessly, and improperly operated the tractor-truck at a speed that was excessive for the prevailing conditions; and
- g) negligently, carelessly and improperly was speeding through a marked construction zone in violation of 625 ILCS 5/11-605.1

13. As a direct and proximate result of one or more of the aforementioned negligent acts or omissions by Marc Tolmie, the Honda automobile occupied by plaintiff James DeFalco was struck in the rear by defendants fully loaded tractor trailer and he was physically injured. His injuries and damages from this collision include permanent neurological deficits, losses of a personal and pecuniary nature including, but not limited to, economic losses, medical expenses, pain and suffering, subsequent surgeries, disfigurement, disability, and loss of a normal life. These losses have been incurred in the past and are reasonably certain to occur in the future. All or some of them are permanent.

Wherefore, it is respectfully requested that judgment be entered in favor of plaintiff James DeFalco and against defendant Marc Tolmie for all damages allowed by law as a result of the July 20, 2020 collision.

Count II

(Vicarious Liability- Luebke Enterprises LLC)

1-12. Plaintiff incorporates by reference the allegations of Count I, paragraphs 1-12 as though fully set forth herein as paragraphs 1-12 of Count II.

13. As a direct and proximate result of one or more of the aforementioned negligent acts or omissions committed by Marc Tolmie for which Luebke Enterprises LLC is vicariously liable, the Honda automobile occupied by plaintiff James DeFalco was struck by a fully loaded tractor trailer and he was physically injured. His injuries and damages from this collision include permanent neurological deficits, losses of a personal and pecuniary nature including, but not limited to, economic losses, medical expenses, pain and suffering, subsequent surgeries, disfigurement, disability, and loss of a normal life. These losses have been incurred in the past and are reasonably certain to occur in the future. All or some of them are permanent.

Wherefore, it is respectfully requested that judgment be entered in favor of plaintiff James DeFalco and against defendant Luebke Enterprises LLC, under the doctrine of vicarious liability, for all damages allowed by law as a result of the July 20, 2020 collision.

Plaintiff Demands Trial by Jury



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